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8 ENERGY HOLDINGS LLC, and MACPHERSON
OIL COMPANY
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 CENTER FOR BIOLOGICAL
DIVERSITY, and SIERRA CLUB, non-
13 profit corporations,

14 Petitioners,

15 vs.

16 CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL,
17 GAS, AND GEOTHERMAL
RESOURCES; and DOES 1 through 20,
18 inclusive,

19 Respondents.
20

21 AERA ENERGY LLC, BERRY
PETROLEUM COMPANY LLC,
22 CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A.
23 INC., FREEPORT-MCMORAN OIL &
GAS LLC, LINN ENERGY HOLDINGS
24 LLC, and MACPHERSON OIL
COMPANY,
25

26 Respondents-in-Intervention.
27
28

Case No. RG15769302

Assigned for all purposes to the Hon. George C.
Hernandez, Dept. 17

**EVIDENTIARY OBJECTIONS AND
MOTION TO STRIKE DECLARATIONS
OF TIMOTHY R. GINN AND MATT
HAGEMANN IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION BY
AERA ENERGY LLC, BERRY
PETROLEUM COMPANY LLC,
CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A. INC.,
FREEPORT-MCMORAN OIL & GAS LLC,
LINN ENERGY HOLDINGS LLC, AND
MACPHERSON OIL COMPANY**

Date: July 2, 2015
Time: 2:30 p.m.
Dept.: 17

Action Filed: May 7, 2015
Trial Date: None set

I. INTRODUCTION

Pursuant to Evidence Code section 353, Respondents-in-Intervention Aera Energy LLC, Berry Petroleum Company LLC, California Resources Corporation, Chevron U.S.A. Inc., Freeport McMoRan Oil & Gas LLC, LINN Energy Holdings LLC, and Macpherson Oil Company (collectively, “Energy Companies”) hereby object to and move to strike the Declaration of Timothy R. Ginn (“Ginn Declaration”) and the Declaration of Matt Hagemann (“Hagemann Declaration”) in Support of Plaintiffs’ Reply Memorandum to Defendants/Respondents Intervenors’ Opposition to Preliminary Injunction, filed on June 25, 2015.

Neither declaration was filed in a timely manner. Rather than file the declarations with the Motion for Preliminary Injunction on May 14, 2015, Plaintiffs waited until their Reply brief to file the Ginn Declaration and the Hagemann Declaration. The Energy Companies have no opportunity to respond to these declarations, and the declarations should both be deemed inadmissible. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.)

Even if the declarations were timely, both declarations are inadmissible because they are simply not relevant to the central issues of this case. (Evid. Code § 350.) The Motion for Preliminary Injunction concerns a specific issue: the alleged contamination of California’s drinking water supplies caused by DOGGR’s administration of the UIC Program. A generic discussion of California’s reliance on groundwater, as described in the Ginn Declaration, speculation concerning possible impacts from the possible reinjection of certain chemicals, as discussed by the Hagemann Declaration, do nothing to shed light on the contested claims underlying this issue. The declarants do not have the requisite personal knowledge of the contamination of California’s aquifers, and instead rely on broad, generic statements that intimate danger without proof. (Ev. Code § 702.) Moreover, both declarations substantially rely on extra-record documents that have not been provided to the Energy Companies. The Ginn Declaration and the Hagemann Declaration should both be excluded from consideration of the Motion for Preliminary Injunction.

II. ARGUMENT

“The general rule of motion practice, which applies here, is that new evidence is not permitted with reply papers.” (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537; see also *Alliant Ins. Servs.*,

1 *Inc. v. Gaddy* (2008) 19 Cal.App.4th 1292, 1308 [applying the rule to preliminary injunction
2 proceedings].) While Plaintiffs are permitted to respond to evidentiary points raised by Defendants and
3 Respondents in their opposition briefs, the challenged declarations go far beyond this. (*Id.* at 1538
4 [stating that reply declarations “should not have addressed the substantive issues in the first instance but
5 only filled gaps in the evidence created by the [respondent’s] opposition”].)

6 The Ginn and Hagemann Declarations introduce entirely new evidence that was not included in
7 Plaintiffs’ moving papers. Plaintiffs were required to present all evidence addressing substantive issues
8 as part of their moving papers. It would be an abuse of discretion for the Court to allow Plaintiffs to
9 introduce this entirely new evidence as part of their reply, especially given the length of time since
10 Plaintiffs submitted their moving papers and the limited time available before the hearing on Plaintiffs’
11 Motion for Preliminary Injunction. Plaintiffs’ Motion for Preliminary Injunction does not even suggest
12 their Motion would rely on future declarations filed by Plaintiffs. (Motion for Preliminary Injunction at
13 p. 2:12–17 [“This Motion is based upon the Notice of Motion and Motion for Preliminary Injunction
14 and supporting Memorandum of Points and Authorities filed May 14, 2015, the Declaration of Tamara
15 T. Azkim in Support of Plaintiffs’ Motion for Preliminary Injunction filed May 14, 2015, the Request
16 for Judicial Notice in Support of Plaintiffs’ Motion for Preliminary Injunction filed May 14, 2015, the
17 pleadings and records on file in this action, and on such oral argument as may be presented at the time
18 the motion is heard.”].) Since Plaintiffs’ Motion as stated does not include reliance on these declarations,
19 the declarations cannot be used to support the Motion.

20 Even if the declarations were timely filed, their content is not relevant to consideration of
21 Plaintiffs’ Motion for Preliminary Injunction. The Ginn Declaration and the Hagemann Declaration
22 both provide extremely general and ultimately improper accounts of the alleged harm that underground
23 injection activities could theoretically cause to groundwater supplies. The Ginn Declaration is a
24 collection of disjointed statements concerning the hydrogeology of California and the danger posed to
25 groundwater supplies by the current drought. (Ginn Decl. ¶¶ 3–7.) The Ginn Declaration notes that
26 groundwater can be a valuable resource for agriculture and drinking water supplies during the drought.
27 (*Id.* at ¶¶ 8–18.) The Hagemann Declaration, on the other hand, merely lists a series of chemicals found
28 in produced water and well stimulation fluids. (Hagemann Decl., ¶¶ 6–21.) The Hagemann Declaration

1 also includes unfounded speculation that underground injection activities in California could degrade
2 groundwater supplies, and provides various alternative means of water disposal without considering the
3 practical difficulties and potentially exorbitant costs such alternatives would impose on the Energy
4 Companies. (*Id.* at ¶¶ 22–30.) Neither declaration is relevant to the contested issues in this case. (See
5 Evid. Code § 350.)

6 The central issue presented by the Motion for Preliminary Injunction is whether DOGGR has
7 permitted contamination of the State’s drinking water supplies by injecting into aquifers that Plaintiffs
8 consider “non-exempt.” (Motion for Preliminary Injunction at p. 1:2–14.) Yet neither the Ginn
9 Declaration nor the Hagemann Declaration purport to provide any information concerning
10 contamination of the State’s drinking water supplies or any contamination of so-called non-exempt
11 aquifers that endangers the public health or safety. The Ginn Declaration is a general discussion of the
12 State’s growing reliance on groundwater supplies, while the Hagemann Declaration is a wholly
13 speculative recitation of the possible impacts from the potential reinjection of certain chemicals.
14 Further, neither declaration actually addresses the question of whether DOGGR has permitted
15 underground injections into aquifers that were not properly exempted. Instead, both declarations rely
16 on broad, generic statements about the science of oil production in California to improperly intimate
17 that DOGGR and the Energy Companies are responsible for some unidentified contamination of the
18 State’s groundwater supplies. The Hagemann Declaration is particularly speculative on the possible
19 implications of the potential reinjection of certain chemicals. The declarations do not offer anything of
20 probative value for the Court, and only risk confusing the issues to the undue prejudice of the Energy
21 Companies.

22 Even if the Ginn Declaration and the Hagemann Declaration effectively presented evidence
23 relevant to the issues in this litigation—proven contamination of drinking water supplies caused by
24 Class II underground injections into aquifers lacking exemptions—their probative value is substantially
25 outweighed by the risk of undue prejudice from their admission. (See Evid. Code § 350.) Neither
26 declarant has sufficient personal knowledge to render the declarations admissible. (Ev. Code § 702.)
27 Mr. Ginn is a professor at U.C. Davis. (Ginn Decl., ¶ 2.) Mr. Hagemann is founding partner of an
28 environmental consulting firm. (Hagemann Decl., ¶ 1.) Neither declarant can speak to the legality of

1 the underground injection activities targeted for prohibition by Plaintiffs' Motion for Preliminary
2 Injunction. The declarants are not legal experts and they did not contribute to the development or
3 enforcement of the California UIC Program. Further, neither declarant has conducted independent
4 testing of California's underground aquifers to assess whether the alleged contamination even exists.
5 Instead, the declarants rely on third-party statements that are already part of the record or lack
6 substantiation. (See Ginn Decl., ¶ 12; Hagemann Decl., ¶ 5.)

7 The declarants' lack of personal knowledge is driven home by repeated reference in both
8 declarations to evidence that is not in the record and does not include proper citations. None of the data
9 or evidence introduced by the Ginn Declaration regarding California's hydrogeology has been presented
10 to the Court or the Energy Companies. (Ginn Decl., ¶¶ 3–15.) The Ginn Declaration does not even
11 include full citations so that the Energy Companies can inspect the information. (*Ibid.*) Further, the
12 Hagemann Declaration relies on 28 footnotes to different websites and reports that have not been
13 included in the record. Plaintiffs have not requested this Court admit the data and evidence supporting
14 these declarations into the record, and it has not provided the Energy Companies with a copy of the data
15 or evidence.

16 Reference to these citations must be struck. And without these citations, the declarations boil
17 down to unsubstantiated assertions describing the interaction of water supplies and oil production in
18 California that are irrelevant to resolution of Plaintiffs' Motion for Preliminary Injunction. (Evid. Code
19 § 350.) The declarations should both be struck as improper.

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III. CONCLUSION

For the foregoing reasons, the Declaration of Timothy R. Ginn and the Declaration of Matt Hagemann in Support of Plaintiffs' Reply Memorandum to Defendants/Respondents Intervenor's Opposition to Preliminary Injunction should not be admitted in the Court's consideration of Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

Dated: June 29, 2015

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By: 
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